

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION

NO.: 7:07-CV-166-H

JANICE HOSLER on behalf of )  
herself and all other similarly )  
situated individuals, )  
 )  
Plaintiffs, )  
 )  
 )  
 )  
v. )  
 )  
 )  
 )  
SMITHFIELD PACKING COMPANY, INC., )  
 )  
Defendant. )

ORDER

This matter is before the court on defendant's motion to exclude the expert opinions of Kenneth Mericle ("Mericle"), who conducted a time study for plaintiffs [DE #361]. United States Magistrate Judge James E. Gates filed a Memorandum and Recommendation ("M&R") on August 26, 2010, recommending that defendant's motion be denied. (Mem. & Recommendation [DE #423].) Defendant objects to the M&R, arguing (1) that Judge Gates failed to apply the standard for admissibility of expert evidence established by the Supreme Court in Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579 (1993), and Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999); and (2) that Mericle's


testimony and report are not scientifically reliable and are, therefore, not admissible under Rule 702.

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved. Judge Gates did not apply the wrong standard in determining whether Mericle's opinions meet the criteria for admission of expert testimony. In applying Daubert and Kumho Tire, Judge Gates simply recognized that the court has "broad latitude to consider whatever factors bearing on validity that the court finds to be useful." (Mem. & Recommendation at 10 (quoting Westberry v. Gislaved Gummi AB, 178 F.3d 257, 261 (4th Cir. 1999))). Judge Gates then found that the issues involved in this case do not involve the same level of scientific certainty needed to examine "some intangible and esoteric biological or chemical process" and, therefore, "do not demand the rigorous level of scientific precision for admissibility that defendant advocates." (Mem. & Recommendation at 10.)

As Judge Gates determined, Mericle possesses the requisite knowledge, skill, experience and education to offer expert testimony concerning the average amount of time needed for donning and doffing protective gear and related activities by employees at defendant's Tar Heel facility. His opinions are

relevant and sufficiently reliable to satisfy the standards of Rule 702 of the Federal Rules of Civil Procedure. Accordingly, the court ADOPTS the recommendation of the magistrate judge as its own. Defendant's motion to exclude Mericle's opinions [DE #361] is DENIED.

This 24<sup>TH</sup> day of September 2010.

  
MALCOLM J. HOWARD  
Senior United States District Judge

At Greenville, NC  
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